REYNOLDS *v.* COMMONWEALTH.

June 15, 1922.

[112 S. E. 707-8.]

1. Jury (§ 70 (10*)—After Quashing Panel for Irregularity Same Jurors Can Be Summoned by Special Venire.—Where the original and additional writs of venire summoning jurors for the term were quashed on defendant's motion for alleged irregularities, the court had authority, under the express provision of Code 1919, § 4896, to direct a new venire and to furnish a list of jurors to be summoned thereunder, and it was not error for him to direct the summoning of those who had been members of the panel and who were not disqualified as jurors.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 26.]

2. Criminal Law (§ 1166½ (5)*)—Unnecessary Resummoning of Jurors after Grant of Motion to Quash Venire Held Harmless.—Where it was unnecessary for the court to grant defendant's motion to quash the panel of jurors for irregularities in the writs of venire, but the court did so, defendant was not prejudiced by the summoning of the same jurors on a new venire, as he would have been if the original panel had been quashed for any ground affecting the competency of the persons summoned to serve as jurors.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 26.]

3. Criminal Law (§ 829 (5)*)—Requested Instruction on Apparent Danger Held Sufficiently Covered.—An instruction that, if deceased at the time of the fatal difficulty did anything to cause defendant to reasonably believe that deceased intended to kill him, or inflict upon him some great bodily harm, and that such danger was imminent, defendant was not guilty, sufficiently covered requested instructions that defendant had a right to determine danger from the appearances and had a right to consider the relative size and strength of the party assaulting him.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 159.]

4. Homicide (§ 295 (2)*)—Requested Instruction on Presumption against Malice Held Erroneous.—A requested instruction that, if there had been no previous difficulty between defendant and deceased prior to the meeting at which the killing occurred, and that sharp words were spoken by deceased to defendant at that meeting, and an altercation ensued in which defendant was killed, the jury was warranted in finding the killing was not done with malice aforethought, but presumption was that such killing was in heat of passion, was erroneous, where the evidence for the commonwealth showed slight, if any, provocation at the time of the killing.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 159.]

5. Homicide (§ 45*)—Sharp Words Do Not Amount to Provoca-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tion Reducing to Manslaughter.—Sharp words do not constitute adequate provocation to reduce a killing by use of a deadly weapon from murder to manslaughter.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 122.]

6. Homicide (§ 309 (1)*)—Instructions on Manslaughter in Combat Held Correct.—Instructions defining voluntary and involuntary manslaughter and stating that, although the jury may not believe defendant killed deceased in self-defense, yet, if the killing was not because of any previous malice, but was done in the course of sudden quarrel in mutual combat upon sudden provocation which was more than slight, defendant was not guilty of any higher offense than voluntary manslaughter, were correct.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 162.]

7. Homicide (§ 341*)—Refusal of Instruction on Malice against Brother of Deceased Held Harmless under the Evidence.—Where the evidence for the commonwealth showed that the difficulty with deceased in which the killing occurred was directly connected with a prior difficulty between defendant and a brother of deceased, the refusal of a requested instruction that proof of ill will against the brother cannot be taken as any evidence of malice or ill will against deceased unless there is shown to be some connection between the trouble between defendant and the two brothers was not prejudicial to defendant, although the instruction might have been given.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 155.]

8. Criminal Law (§ 1171 (1)*)—Argument by Prosecuting Attorney Held Not Prejudicial.—In a prosecution for homicide, an argument by the attorney for the commonwealth that one who arms himself to kill a special individual and kills a different person is just as guilty as if he killed the first one, though not an exact statement of the law, was not prejudicial to accused, where the evidence showed that the difficulty in which accused was killed was directly connected with the difficulty between defendant and another, as a result of which defendant armed himself against the other.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 156.]

Error to Circuit Court, Patrick County.

A. T. Reynolds was convicted of murder in the second degree, and he brings error. Affirmed.

W. L. Joyce, Hooker & Hooker, and *S. A. Thompson,* all of Stuart, for plaintiff in error.

John R. Saunders, Atty. Gen., for the Commonwealth.

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